

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT KNOXVILLE

MAY 1998 SESSION

<p>FILED</p> <p>September 10, 1998</p> <p>Cecil Crowson, Jr. Appellate Court Clerk</p>

MAURICE DEWAYNE DAVIS,)
)
 Appellant,)
)
 v.)
)
 STATE OF TENNESSEE,)
)
 Appellee.)

No. 03C01-9705-CR-00170
 Knox County
 Honorable Mary Beth Leibowitz, Judge
 (Post-Conviction)

For the Appellant:

Thomas Trevathan
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For the Appellee:

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 and
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OPINION FILED: _____

AFFIRMED

Joseph M. Tipton
 Judge

OPINION

The petitioner, Maurice Dewayne Davis, appeals as of right from the judgment of the Knox County Criminal Court denying him post-conviction relief from his 1993 conviction for second degree murder that resulted in a twenty-five-year sentence in the Department of Correction. The petitioner contends that he entered an involuntary and unknowing guilty plea through the ineffective assistance of counsel.

The record on appeal reflects that the petitioner was originally charged with first degree murder, but he pled guilty to second degree murder after jury selection started. This was precipitated by the fact that the defense was made aware that a codefendant was willing to testify against the petitioner and had given a statement that could justify a conviction for first degree murder. The defense had previously planned to use self-defense as justification for the killing. The petitioner's attorneys advised him of his exposure to a life sentence and he was allowed to go home -- even with jurors selected -- to consult with his family before he entered a plea.

The trial court's detailed findings of fact and conclusions of law reflect that the petitioner testified at the post-conviction evidentiary hearing that his attorneys did not tell him what to do, only giving advice, and that he had wanted to avoid a life sentence. One of the attorneys testified, as well. The trial court concluded that the attorneys had prepared the defense and acted professionally and that the guilty plea was entered knowingly and voluntarily.

The petitioner's contentions in this appeal are the same as he raised in the trial court. However, the record before us does not contain a transcript of the post-conviction evidentiary hearing at which the petitioner and the attorney testified. An appellant has the duty to include in the record on appeal all trial court events that are

relevant to the issues presented on appeal. See T.R.A.P. 24(a). In the absence of a complete record, we must presume that the trial court's ruling on the issue is correct. See State v. Bennett, 798 S.W.2d 783, 789 (Tenn. Crim. App. 1990).

In any event, the trial court's findings and conclusions that are contained in the record reflect that the petitioner's constitutional rights were not violated. The trial court's judgment denying post-conviction relief is affirmed.

Joseph M. Tipton, Judge

CONCUR:

Joe G. Riley, Judge

Curwood Witt, Judge